

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
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Rui YAMADA et al.	)	Group Art Unit: 2624
	)	
Serial No.: 10/521,623	)	Examiner: Bayat, Ali
	)	
Filed: January 14, 2005	)	Confirmation No.: 2018
	)	
For: IMAGE PROCESSING METHOD,	)	
IMAGE DATA PROCESSING	)	
APPARATUS, AND COMPUTER	)	
PROGRAM	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO REQUIREMENT FOR RESTRICTION  
AND ELECTION OF SPECIES**

In the Office Action mailed October 1, 2008, the period for response to which extends through November 3, 2008 (November 1, 2008 being a Saturday, and November 2, 2008 being a Sunday), the Examiner required an election under 35 U.S.C. § 121 between the following alleged species: Species I - Figure 6 (claims 45-57), Species II - Figure 12 (claims 58-69, 75, and 76), and Species III - Figure 18 (claims 70-74). The Examiner did not deem any claim as generic. See Office Action at p. 2.

Applicants provisionally elect to prosecute Species I, Figure 6, **with traverse**. Applicants submit that at least claims 45-68, and 74 are readable on elected Species I.

The Examiner indicates that Figures 6 and 12 represent different species. This is simply incorrect. Figure 6 depicts a process "in the image processing apparatus of the present invention." Applicants' Specification, p. 31. Figure 12 depicts a process "of an

image data processing method of the present invention.” Applicants’ Specification, p. 31. The Office Action apparently distinguishes method claims as being a different species than apparatus claims, even though the claims are directed to the same embodiment. This is not a proper species restriction.

Method claims 45-57, apparatus claims 58-69, and apparatus claim 74 do not recite separate species of a genus. The “species” of Figure 6 and Figure 12 do not recite mutually exclusive characteristics, as alleged (without any support) by the Examiner. See Office Action at p. 2. Furthermore, as noted in M.P.E.P. § 803(I), “there must be a serious burden on the Examiner, if restriction is required.” (emphasis added). The Examiner has shown no such burden.

In the event that the Examiner continues to believe that there is a search burden associated with examining all of the pending claims, and for the Examiner’s convenience, Applicants suggest an alternate grounds for restricting the present application.

Invention I: claims 45-68, and 74, directed to a method and apparatus for performing a final pixel value adjustment.

Invention II: claims 70-73, 75, and 76, directed to a method, apparatus, and computer-program for acquiring image data, motion information, and performing a processing based on the motion information.


If the Examiner agrees with Applicants’ alternative grounds for restriction, Applicant provisionally elects Invention I, claims 45-68, and 74.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: November 3, 2008

By:   
Trenton J. Roche  
Reg. No. 61,164